HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.13786 of 1997

Date: April 12, 2007

Between:
The Orugallu District Co-operative Marketing Society Ltd., Karimabad, Warangal town and District, represented by its Business Manager, Sri V.Satyanarayana, son of Venaiah, aged 55 years, resident of Hanmakonda, Warangal Town and District.

… Petitioner.

And

1. The Deputy Commissioner of Labour-cum Second appellate Authority (under section 48 (3) of A.P. Shops and Establishments Act, 1988, Warangal and 5 others.

… Respondents.

* * *

ORDER:

This writ petition is filed seeking a certiorari to call for records relating to the order in second appeal No.10 of 1995 in File No.131/1243/95, dated 28.2.1997, on the file of the Deputy Commissioner of Labour-cum-Second Appellate Authority under Section 48 (3) of A.P. Shops and Establishments Act, 1988, at Warangal.

2. It appears respondent No.2 (since died) while serving the petitioner co-operative society, was dismissed from service on 29.9.1994. Complaining the same to be illegal, the respondent No.2 made an application under Section 48 of A.P. Shops and Establishments Act, 1988, before the Assistant Commissioner of Labour, Warangal-II. The petitioner was issued with notice fixing the date of hearing on 09.11.1994, 25.11.1994, 08.12.1994, 23.12.1994

and finally on 28.12.1994. But, the petitioner failed to appear before the primary authority and file counter. Therefore, he was set *ex parte* on 28.12.1994 and ultimately an *ex parte* order was passed on 09th day of January 1995 directing the petitioner to reinstate the respondent No.2 with continuity of service immediately. Aggrieved by the same, the petitioner filed a second appeal in S.A.No.10 of 1995 before the second Appellate Authority under Section 48 (3) of A.P. Shops and Establishments, 1988-cum- Deputy Commissioner of Labour, Warangal. The second appellate authority, after a detailed consideration of the entire issue, came to the conclusion that the petitioner failed to comply with the provisions of Section 47 of the Shops and Establishments Act, 1988, prior to removal of the respondent, therefore, directed reinstatement of the appellant into service with full back wages and continuity of service. Aggrieved by the same, the management filed the present writ petition.

3. Learned counsel for the petitioner Sri B.Narayana Reddy, strenuously contended that the respondent committed certain irregularities while working as Salesman in the society and in fact after an enquiry under Section 51 of the A.P. Co-operative Societies Act, 1964, proceedings under Section 60 of A.P. Co-operative Societies Act, 1964, were also initiated. Therefore, termination of the services of the respondent was imminent. Thus, the services of the respondent were terminated with effect from 29.9.1994. Assuming that the termination of the respondent is illegal, the primary authority had directed reinstatement of the respondent with continuity of service. The appellate authority ought not to have further granted relief of full back wages to the respondent. The respondent in fact committed so many irregularities and therefore the question of awarding back wages does not arise.

4. Learned counsel for the respondent No.2 Sri V.Hari Haran, supported the order passed by the appellate authority in granting full

back wages.

5. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

6. It is an admitted fact that the procedure as contemplated under Section 47 of the A.P. Shops and Establishments Act, 1988, was not followed while passing the termination order dated 29.9.1994. The petitioner, in fact, in spite of giving sufficient opportunity neither appeared before the primary authority nor filed any counter. Under those circumstances, the primary authority has passed an order directing reinstatement of the respondent No.2 with continuity of service. But, however, there was no order as to back wages.

7. In fact, in a case where there is a blatant violation of the provisions of Section 47 of the A.P. Shops and Establishments Act, 1988, an employee is not only entitled for reinstatement and continuity of service, but also for full back wages, unless it is shown that he approached the authority with un-condonable delay etc., This is not one such a case. Under those circumstances when the respondent-employee filed an appeal, the appellate authority has rightly found that once there is violation of the provisions of Section 47 of A.P. Shops and Establishments Act, 1988, the respondent is automatically entitled for back wages also. I am of the opinion that the appellate authority has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merit and liable to be dismissed.

8. Accordingly, the writ petition is dismissed. No order as to costs.

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(C.V.RAMULU, J.)

Date: April 12, 2007.
BSB